

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6325 of 1994

with

SPECIAL CIVIL APPLICATION No 7611 of 1998

with

SPECIAL CIVIL APPLICATION No 3110 of 1999

with

SPECIAL CIVIL APPLICATION No 449 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
- 1 & 2 Yes, 3 to 5 - No

RAMAN G. PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

DR MUKUL SINHA and MR PARESH UPADHYAY for
Petitioners
Ms MANISHA LAVKUMAR, AGP i/b M/S PATEL ADVOCATES
for Respondent No. 1
MR SM MAZGAONKAR, MR KAUSHIK PUJARA and MR DC DAVE
for other Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/10/1999

COMMON CAV JUDGEMENT

All these petitions are filed by Range Forest Officers (RFOs) raising question about interpretation of the rules for determining seniority for promotion to the cadre of Assistant Conservators of Forest (ACFs). Since they all raise connected, if not common, questions of law, the petitions have been heard together and are being disposed of by this common judgment.

2.0 The facts leading to filing of Special Civil Application No. 6325 of 1994 are as under :-

2.1 This petition has been filed by two RFOs who were directly recruited to the post of RFO. After selection by the Competent Authority, they were appointed and they joined on 8.2.1981 and 10.3.1981 respectively. The said officers successfully completed the training prescribed by the statutory Rules called the Rangers (Subordinate Forest Service) (Recruitment Examination) Rules, 1974 (hereinafter to be referred to as "the 1974 Rules"). Thereafter the petitioners were required to pass the departmental examination under the Gujarat Forest Department (Forest Officers Examination) Rules, 1972 (hereinafter referred to as "the 1972 Rules"). As per the Rules, the RFO had to pass the examination under the 1972 Rules within three chances and within five years from the date of joining. Both the petitioners passed the said examination held in July, 1990. The petitioners thus did not pass the examination within the specified chances and within the specified period.

2.2 The provisions of Rule 8 of the 1972 Rules provide that a person passing the departmental examination within the specified period and in specified chances shall on his promotion to the post of ACF be assigned seniority over a person, if any, who although being junior to him in the cadre may have been promoted to the higher post earlier by reason of his having passed the examination earlier. Rule 7 provided that an RFO who passes the above examination beyond the specified period or beyond the specified chances shall be eligible for promotion to the higher post, provided that "such a person shall lose his seniority and shall also become junior to all those who may have passed the examination earlier than him" (old proviso to Rule 7).

The aforesaid proviso to Rule 7 came to be amended by the statutory Rules dated 6.3.1993 called the Gujarat Forest Department (Forest Officers Examination) (Amendment) Rules, 1993 contained in the Government Notification dated 6.3.1993 (Annexure "B"). As per the

said amendment, the proviso to Rule 7 came to be substituted by the following proviso :-

"Provided that such a person shall not be entitled to claim seniority over those persons who have been promoted before he becomes eligible for promotion on account of their having passed the Departmental Examination earlier than him notwithstanding that he was senior to the persons so promoted in the cadre from which promotion was given."

2.3 The respondent-authorities published provisional seniority list of RFOs as on 1.1.1991 alongwith their circular dated 30.8.1993. The petitioners made representation dated 28.9.1993 against the said provisional list (Annexure "C"). The respondent-authorities published final seniority list dated 3.2.1994 (Annexure "D") showing the position of the RFOs as on 1.1.1991 and in the said final seniority list, the petitioners are shown at Sr. Nos. 242 and 243 respectively. The petitioners have prayed for the following reliefs in Special Civil Application No. 6325/94 :-

"For directing the respondent-authorities -

(A) to fix the seniority of the petitioners and others in the cadre of Range Forest Officers (RFOs) in accordance with the amended rule 7 at Annexure "B" to the petition.

(B) to consider the case of the petitioners for promotion to the post of Assistant Conservator of Forest (ACF) above those juniors of the petitioners who were not promoted to the post of ACF till July, 1990 when the petitioners became eligible for the said post.

(C) to consider the case of the petitioners for promotion to the next higher post as per prayer "B" and confer upon them all consequential benefits of promotion, pay fixation, seniority, etc. if found fit for promotion."

2.4 When the petition came up for preliminary hearing before this Court on 3.5.1994, the following order was passed :-

"Rule returnable on 27.6.1994. By way of ad-interim relief, respondents are directed not to fill up two promotional posts of Assistant Conservator of Forests till the disposal of this petition."

3. Special Civil Application No. 7611 of 1998 has been filed by two other RFOs contending that for giving promotions after the amendment of the Rules on 6.3.1993 (para 2.3), the seniority list of RFOs as on 1.1.1991 prepared on the basis of the unamended Rule 7 cannot be acted upon for promotion to the post of ACFs after 6.3.1993. They have prayed for appropriate writ, order and directions :-

"(A) Declaring that the impugned gradation list dated 3.2.1994 at Annexure VII is irrational, discriminatory, in violation of Articles 14 and 16 of the Constitution of India and, therefore, void and quashing and setting aside the same.

(B) Declaring that the petitioners are entitled to be considered for promotion to the post of ACF from the date of passing the departmental examination, i.e. June 1990 on the basis of a gradation list framed under the Rule 22 of the Rangers Recruitment Rules and are also entitled to claim seniority above all other RFOs who are junior to the petitioners but have been promoted to the post of ACF because of their having passed the departmental examination earlier but having been promoted after the petitioners have passed their departmental examination.

(C) Directing the respondents to consider the cases of the petitioners for promotion for the post of ACF prior to the consideration of any other RFOs who are junior to the petitioners.

(D) Declaring that the old proviso to the rule 7 of the Examination Rules is ultra vires and permanently restraining the respondents from implementing or in any manner in furtherance of the said

proviso, alternatively,

(E) Declaring that the old proviso to the Rule 7 of the Examination Rule is not a rule of seniority and, therefore, no gradation list can be made on the basis of the said old proviso.

(F) Permanently restraining the respondents from promoting or considering any junior officers to the petitioners for promotion to the post of ACF on the basis of the impugned gradation list."

After issuance of notice, when the petition came up for preliminary hearing before this Court on 12.10.1998, the following order was passed :-

"By way of interim order, the respondents are directed to continue the process of giving promotions to the post of Asstt. Conservator of Forests, Gujarat Forests Services Class-II, subject to the result of the petition. However, no final order shall be passed till the petition is heard on the question of interim relief. S.O. 19.11.1998."

Thereafter on 11.3.1999, while refusing to grant interim relief, this Court directed as under :-

"It is directed that the operation of the impugned seniority list and the promotion of the concerned Range Forest Officers shall be subject to the result of this petition. Ad-interim order made on 12th October, 1998 stands modified to the aforesaid extent."

4. Special Civil Application No. 3110 of 1999 has been filed by an RFO similarly situated as the petitioners of the above two petitions. In view of the controversy whether the amendment to the Rules made on 6.3.1993 was being applied, and whether can be applied, retrospectively or prospectively, in this petition the challenge is made to the unamended proviso to Rule 7 as existing prior to 6.3.1993 and prayer is also made to direct the authorities to refix the seniority in the cadre of RFOs ignoring the said proviso to Rule 7 of the Gujarat Forest Departments (Forest Officers Examination Rules, 1972 and to direct the respondent authorities not to grant promotion to the post of ACFs as per the

seniority determined on the basis of the proviso to Rule 7.

5. Special Civil Application No. 449 of 1994 is filed by four RFOs who have challenged the communication dated 29.9.1994 (Annexure "G") by which the State Government in the Forest Department instructed the Principal Conservator of Forests to fix the seniority of RFOs in such a manner that the RFOs of 1979-81 batch selected earlier were required to be shown en-bloc seniors to the RFOs who were selected in 1980-81 batch without considering the date of their joining as RFOs. This petition is not directly connected with the controversy raised in the first three petitions but since reference is made to some of the Rules which are also subject matter of interpretation in the aforesaid petitions, this petition has also been heard alongwith the other petitions.

6. Before narrating the rival contentions of the parties, it is necessary to refer to a few relevant Rules which have a bearing on the controversy involved in this group of petitions.

6.1 Recruitment to the post of Rangers (subsequently redesignated as Range Forest Officers or RFO for brevity) was previously done under the Rangers (Subordinate Forest Service) Recruitment Rules, 1969 framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Appointment to the post could be made either by promotion from amongst Forest Officers or by direct selection. In this group of petitions, we are concerned only with direct recruitment. Rules 9, 10, 13, 14 and 16 of the said Rules read as under :-

"9. The selected candidate shall be required to undergo practical training in the Forest for a period of eight weeks. During the period of practical training the candidate shall receive stipend and travelling allowance, as the Government may, from time to time, fix.

10. The candidate finally selected will be required to undergo training for the Rangers Course at the Northern Forest Ranger College, Dehradun or Southern Forest Ranger College, Coimbatore for a period of two years.

13. On successful completion of the Training Course from the Rangers' College, the candidate shall be appointed as a Ranger if he passes with

higher standard certificate and as a Forester if he passed with lower standard certificate.

14. The seniority of the Rangers shall be governed by their respective ranks in the final examination, irrespective of the date of joining the service.

16. A candidate who has passed the Rangers' Course with lower standard, shall be eligible for promotion as a Ranger, after completion of a period of five years."

(emphasis supplied)

6.2 In exercise of powers conferred by the proviso to Article 309 of the Constitution, the Governor of Gujarat also made the Rangers (Subordinate Forest Service) (Recruitment Examination) Rules, 1974 under which the Gujarat Public Service Commission is to hold a competitive examination comprising of written test followed by viva-voce and personality test for recruitment to the posts of Rangers (RFOs) in the Forest Department. The candidates passing the said examination are included in the Select List of candidates for recruitment to the posts of RFO and are sent for the training for the Rangers' Course at the specified institutions at Dehradun/Coimbatore. Rules 21 to 25 read as under :-

"21. On successful completion of the Training Course from the Ranger's College, the candidate shall be appointed as a Ranger if he passes with higher standard certificate and as a Forester if he passes with lower standard certificate.

22. The seniority of the Rangers shall be governed by their respective ranks in the final examination at the Ranger's College irrespective of the date of joining the service.

23. The candidate who had passed the Rangers' Course with lower standard, shall be eligible for promotion as a Ranger, after completion of a period of five years.

24. The candidate appointed as a Ranger shall be required to pass the Departmental Examination and an examination in Hindi or Gujarati or both in accordance with the rules made by the Government in that behalf.

25. No candidate shall be allowed more than 2 chances for appearing at the examination provided that a candidate belonging to Scheduled Tribes or Scheduled Castes shall be allowed chances not exceeding four for appearing at the examination."

(emphasis supplied)

6.3 In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor of Gujarat has also framed the Gujarat Forests Department (Forest Officers Examination) Rules, 1972 for regulating the conditions of service of persons appointed to the posts in the Gujarat Forest Service, Class II and III in the Forest Department, in so far as they relate to the passing of the Departmental Examination. The Rules are contained in the Government Notification dated 15.1.1972. The relevant Rules are Rules 4, 6, 7, 8 and 9. Rule 5 is relevant but the same only provides that the examination required to be passed under Rule 4 shall have to be passed in not more than three chances within the specified period. Two provisos to Rule 4(1) are not relevant here as there is a proviso for additional chances for persons belonging to reserved categories and also the proviso to the effect that the chances availed of under the said Rules shall be counted under the present Rules.

"4.(1) In order to be eligible for promotion to the post of an Assistant Conservator of Forest, a Range Forest Officer appointed prior to the appointed date shall have to pass the examination within a period of 5 years from the date of his appointment Range Forest Officer unless he has been exempted from the passing the examination ;

xxx xxx xxx xxx xxx

(2) In order to be eligible for promotion to the post of an Assistant Conservator of Forests a Range Forest Officer appointed on or after the appointed date shall have to pass the examination within a period of five years from the date of his appointment as a Range Forest Officer unless he had been exempted from passing the examination provided that no Range Forest Officer shall be competent to appear at the examination unless he has completed two years' service as Range Forest Officer.

6. (1) If a direct recruit for the post of Assistant Conservator of Forests fails to pass the examination as required under these rules, his services shall be terminated.
- (2) If a Range Forest Officer fails to pass the examination as required under these rules, he shall not be eligible for promotion as Assistant Conservator of Forests until he passes the examination.

Provided that if in the case of any such person the State government is satisfied that he could not pass the examination at which he had his last chance for reasons beyond his control or that he failed to pass such an examination by a very narrow margin of marks, the State government may, after recording reasons in writing, give him one more chance to pass the examination.

7. A Range Forest Officer who fails to pass the examination within the period specified in rule 4 and according to the chances available to him under rule 5, shall, notwithstanding such failure be eligible to appear at any time in such examination on payment of an examination fee of Rs.30/- and if he passes the examination, he shall be eligible for promotion to the higher post.

Provided that such a person shall lose his seniority and shall also become Junior to all those who may have passed the examination earlier than him.

8. A Range Forest Officer who passes the examination within the specified and in specified chances shall on his promotion to the post of Assistant Conservator of Forests be assigned seniority over a person, if any, who although being junior to him in the cadre may have been promoted to the higher post earlier by reason of his having passed the examination earlier.

9. In the event of a qualified Range Forest Officer not being available for promotion to the post of the Assistant Conservator of Forests, an

unqualified Range Forest Officer, whose chances to pass the examination are not exhausted under rule 4 or 5 may be promoted to officiate as the Assistant Conservator of Forests subject to the condition that he shall be reverted on availability of a person qualified for promotion or on his failure to pass the examination within the specified period and according to the chances specified in rule 4 or 5, whichever even occurs earlier.

Explanation : In this rule "a qualified Range Forest Officer' means a Range Forest Officer who had passed the Departmental Examination of a Range Forest Officer who is exempted from passing the said examination and the expression "an unqualified Range Forest Officer' shall be constructed accordingly.

6.4 By Government notification dated 6.3.1993, an amendment was made to the 1972 Rules for departmental examination by substituting the proviso to Rule 7 by the following proviso :-

"Provided that such a person shall not be entitled to claim seniority over those persons who have been promoted before he becomes eligible for promotion on account of their having passed the Departmental Examination earlier than him notwithstanding that he was senior to the persons so promoted in the cadre from which promotion was given."

7. At the hearing of these petitions, Dr Mukul Sinha, learned counsel for the petitioners in first two petitions raised the following contentions :-

(A) The Departmental Examination Rules of 1972 do not contain the Rules for determining seniority in the cadre of RFOs but they merely contain the Rules for determining the eligibility for promotion to the higher cadre of ACFs and, therefore, the seniority list for the cadre of RFOs has to be prepared only on the basis of Rule 22 of the RFO Rules of 1974 which is in pari materia with Rule 14 of the 1969 Rules. Hence, the seniority list dated 4.2.1994 of the RFOs prepared on the basis of the Departmental Examination Rules of 1972 is illegal and null and void ab-initio.

(B) The proviso to Rule 7 of Departmental Examination Rules of 1972 whether before amendment or after amendment only restricts the scope of Late Latifs claiming seniority in the higher cadre of ACFs and it does not rob them of their seniority in the lower cadre of RFOs. In support of the said contention, strong reliance is placed on the decision of a Division Bench of this Court in 1985 (2) GLR 1077.

(C) Assuming that the Departmental Examination Rules of 1972 contain the rules for determining seniority in the cadre of RFOs, all the matters relating to seniority in the cadre of RFOs and promotion to the cadre of ACFs after 6.3.1993 are governed by the Departmental Examination Rules of 1972 as amended by the Government Notification dated 6.3.1993 particularly the amendment to proviso to Rule 7.

(D) Praying for a writ to direct the respondent-authorities to prepare the seniority list of RFOs for the purpose of promotion to the post of ACFs with effect from and after 6.3.1993 on the basis of the amended proviso to Rule 7 does not amount to praying for giving retrospective effect to the 1993 amendment because the petitions are filed only for praying for giving prospective effect to the said amendment i.e. with effect from the date of the notification containing the amendment to Rule 7. It is contended that the said amendment was made pursuant to the recommendations made by the General Administration Department through Government Resolution dated 2.4.1975 as modified by the Government Resolution dated 30.9.1978.

(E) The entire object of the amendment to the proviso to Rule 7 was to soften the rigour of the loss of seniority which was being caused to late Latifs (who passed the Departmental Examination beyond the specified chances or beyond the specified period) but the respondent-authorities are acting illegally and inconsistent with the object of the amendment by acting upon the seniority list of RFOs as on 1.1.1991 even after the date of amendment (6.3.1993) as if there was no amendment to the proviso to Rule 7 of the Departmental Examination Rules of 1972. It is vehemently contended that service conditions pertaining to

seniority are liable to alteration by subsequent changes that may be introduced in Rules and except to the extent of protecting promotions that have already been earned, the revised rules will operate to govern seniority and future promotion prospects of all persons in the concerned service on and after 6.3.1993. Strong reliance is placed on the decisions of the Apex Court in AIR 1982 SC 1064 (para 17), 1989 (4) SCC 689 (paras 16 & 17), 1997 (6) SCC 623, 1998 (4) SCC 598, 1997 (10) SCC 419 and 1999 (1) SCC 249. The last two decisions have been relied upon in support of the contention that while filling in vacancies, the existing Rules are required to be looked at and not the Rules which were in force at the time of preparation of the seniority list.

8. On the other hand, Ms Manisha Lavkumar, learned AGP for the respondent-authorities, Mr S.M. Mazgaonkar, Mr KB Pujara and Mr DC Dave, learned counsel appearing for the private contesting respondents have made the following submissions :-

- (1) The petitions deserve to be dismissed on the ground of suppression of material facts.
- (2) The petitions also deserve to be dismissed on the ground of delay, laches and acquiescence.
- (3) The petitions must also fail on the ground of non-joinder of necessary parties as all the persons whose seniority/gradation from promotion is likely to be affected are not joined as party respondents. Reliance is placed on the decisions in (1999) 3 SCC 453 and AIR 1985 SC 167.
- (3A) Unless specifically prescribed, the amended Rules would have prospective operation. In the present case, the amended proviso to relevant Rule 7 does not speak about its retrospective operation and, therefore, the same is required to be construed to have only prospective operation. Reliance is placed on the decision in AIR 1990 SC 405.
- (4) The benefit and right accrued to the contesting respondents under the then existing rules, framed under the proviso to Article 309 of the Constitution, for being considered for promotion as per the ranking already obtained on passing the departmental examination in the year 1986, cannot be taken away by the amendment dated

6.3.1993 as it would tantamount to applying the amendment with retrospective effect, and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which would affect or impair the vested rights. Strong reliance is placed on the decisions in AIR 1987 SC 1676, 1986 Suppl.SCC 584 and AIR 1990 SC 405.

- (5) Amended rules of seniority would not apply to employees appointed long prior to the amendment. Reliance is placed on the decisions in AIR 1989 SC 1071 and AIR 1972 SC 670.
- (6) Giving retrospective effect to amendment in rules of seniority should be avoided as it creates frustration and discontentment and just expectations are falsified and settled seniority is thereby unsettled. Reliance is placed on the decision in AIR 1981 SC 561.
- (7) On interpretation of the rules, the "late Latif" (the petitioners herein fall in this category) would stand below all his junior regulars (the respondents herein) who have already passed the examination on the date when the "late Latif" has become eligible, and the "late Latif" cannot claim restoration of seniority over such junior regulars who had qualified and become eligible earlier than him. Reliance is placed on the decisions in 1991 (1) GLH 72, 1996 (3) GLR 255 and 1985 (2) GLR 1077 and also on the unreported judgment of a Division bench of this Court (Coram : Hon'ble Mr Justice SB Majmudar - as His Lordship then was and Hon'ble Mr Justice NJ Pandya) in Special Civil Application No. 4615/86 and cognate matters decided on 7.11.1990.
- (8) This Court would not exercise jurisdiction akin to appellate jurisdiction against the determination of seniority by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair play. The court would not overturn the determination of seniority unless it would be unfair not to do so. Reliance is placed on the decision in AIR 1986 SC 1859 = 1986 Suppl. SC 185.

(9) The final seniority list prepared in 1994 is already acted upon and a large number of officers have been promoted on the basis thereof between 1994 and 1999 and they have been holding the posts for sufficiently long period. Disturbing the said list at this stage would have far reaching adverse effect. Hence, for this reason also, this Court should not disturb the seniority list. Reliance is placed on the decision in AIR 1988 SC 887 = 1988 (2) SCC 201.

9. Before dealing with the major contentions relating to the interpretation and applicability of the amendment to Rule 7 and the constitutionality of the relevant Rules, it is necessary first to deal with the preliminary contentions raised on behalf of the respondents which are already enumerated at Sr. Nos. (1) to (3) hereinabove.

10.0 Whether there is suppression of material facts ?

10.1 It is pointed out in the reply affidavit filed on behalf of the private contesting respondents that the unamended proviso to Rule 7 of the 1972 Rules provided that a person who passed the departmental examination beyond the specified period and specified chances shall lose the seniority in the cadre of RFOs and shall also become junior to those who might have passed the examination earlier than him. In spite of the said Rule, the respondent authorities had published seniority list in 1987 on the basis of the date of passing the training examination under the Recruitment Examination Rules and the respondent authorities were not giving effect to the proviso to Rule 7 of the Departmental Examination Rules of 1972. Hence two of the present contesting respondents and another person had filed Special Civil Application No. 6007 of 1991 for directing the respondents to implement the said Rule i.e. proviso to Rule 7 of the Departmental Examination Rules of 1972. The petitioners of Special Civil Application No. 6325/94 were parties to the said petition. When the said petition came up for hearing before this Court on 3.8.1993, a statement was made on behalf of the respondent authorities that fresh provisional seniority list will be prepared as per the Departmental Examination Rules of 1972 within three months and further that the notification dated 6.3.1993 will be applied prospectively. In view of the said statement, the learned counsel appearing for those petitioners (belonging to the group of private contesting respondents herein) withdrew that petition. The said order was passed in presence of the respondents in the

said petition (petitioners in the present Special Civil Application No. 6325/94) and their counsel had also stated that they had no objection to the statement made on behalf of the respondent authorities as regards prospective applicability of the Notification dated 6.3.1993. It is submitted that this was a material fact which was required to be stated in the present petitions. By not doing so, the petitioners are guilty of suppression of material facts and, therefore, the petitions deserve to be dismissed.

10.2 Since the learned counsel for the respondents have seriously pressed this contention, it is necessary to set out the order dated 3.8.1993 of this Court in its entirety :-

"The learned Advocate Mr NK Majmudar appearing for Mr AR Dave, Additional Solicitor to the Government makes a statement on instructions given to him by the Legal Superintendent who is present in Court that a fresh provisional seniority list will be prepared as per the Rule of 1972 within three months and further that the notification dated 6th March 1993 will be applied prospectively. The learned counsel appearing for the petitioners submits that in view of this statement the petitioner seeks permission to withdraw this petition. Permission granted. Petition stands rejected as withdrawn.

The learned counsel for the respondents Nos. 4 and 5, Mr Hathi and the learned counsel Mr Lakhani for the respondents Nos. 6 to 11 state that they have no objection to the statement as regards applicability of notification dated 6th March 1993. If these respondents have any objection, they can raise their objections against the provisionally seniority list and it will be for the concerned authority to consider such objections and decide upon the question before it prepares the final seniority list. Even thereafter if these respondents will have any grievance they can always take recourse to law. Mr Patel learned counsel appearing for the respondent No. 2 states that he is not objecting to the statement which is made by the learned Assistant Government Pleader on behalf of the Government."

10.3 An analysis of the above order yields the

following result :-

- (i) The respondent authorities agreed to prepare a fresh provisional seniority list as per the Departmental Examination Rules of 1972 (i.e. unamended proviso to Rule 7)
- (ii) The amendment to the proviso to Rule 7 as per notification dated 6.3.1993 was agreed to be applied prospectively.
- (iii) In view of the aforesaid statement, the petitioners in that petition (belonging to the group of contesting respondents herein) withdrew that petition.
- (iv) The respondents in that petition (the petitioners herein) had no objection to the prospective applicability of the notification dated 6.3.1993 containing amendment to the proviso to Rule 7.
- (v) If those respondents (the petitioners herein) were to have any objection against the provisional seniority list to be published, it would be open to them to raise their objections against the provisional seniority list and the authorities were bound to consider the objections before preparing the final seniority list.
- (vi) If those respondents (i.e. the petitioners herein) would still have any grievance, they could take recourse to law i.e. it was open to them to file a petition to challenge the final seniority list.

10.4 Non mentioning of the aforesaid order of this Court cannot possibly unsuit the petitioner on the ground of suppression of material facts because this court did not consider any issue in the aforesaid petition. All that this Court recorded was the statement made on behalf of the authorities that the amendment to the Rules as per the notification dated 6.3.1993 would be given prospective effect and that the respondents would issue a fresh provisional seniority list and finalize the same after considering the objections thereto and while doing so prospective effect to the amendment would be given.

What the respondent authorities did thereafter was to issue a provisional seniority list of RFOs as on 1.1.1991, but thereafter did not prepare another seniority list as on 6.3.1993 for applying the

notification dated 6.3.1993 containing amendment to the proviso to Rule 7. The case of the petitioners in the aforesaid two petitions i.e. Special Civil Application Nos. 6325/94 and 7611/98 is that while giving promotions to the post of ACF after 6.3.1993 the Government authorities cannot rely upon the seniority list of RFOs (lower cadre) prepared on the basis of the rules in force prior to 6.3.1993.

On the other hand, the case of the respondents is that even after 6.3.1993, the seniority list of RFOs as on 1.1.1991 can be operated for giving promotions to the cadre of ACFs and that the amendment contained in the notification dated 6.3.1993 would not apply to the employees who were already in the cadre of RFOs prior to 6.3.1993.

The bone of contention, therefore, is whether the respondent authorities are acting legally in operating the seniority list of RFOs as on 1.1.1991 prepared on the basis of pre-amended Rules even while giving promotions to the cadre of ACFs after the date of amendment i.e. 6.3.1993. This Court does not find that the Court's order dated 3.8.1993 could be construed as a material fact which could have any relevance to the aforesaid controversy in the present petitions. As already indicated above, all parties to Special Civil Application No. 6007/91 were agreeable to the proposition that the amendment contained in notification dated 6.3.1993 was to be applied prospectively. The controversy as pointed out above is in the realm of law and service jurisprudence and nothing turns on the aforesaid order dated 3.8.1993. The preliminary contention raised on behalf of the respondents cannot, therefore, be accepted.

Do the petitions suffer from delay :-

11.0 The next preliminary contention is about delay in filing the petitions.

11.1 It is contended that in Special Civil Application No. 7611/98 the petitioners have challenged the seniority list dated 3.2.1994 after a delay of 4 years and in Special Civil Application No. 3110/99 the proviso to Rule 7 of 1972 Rules is challenged after a period of 17 years. It is true that there is considerable delay in filing Special Civil Application No. 3110/99 but that petition challenges the constitutional validity of the proviso to Rule 7 and the said issue is being dealt with separately.

11.2 It may prima facie appear that Special Civil Application No. 7611/98 challenging the seniority list dated 3.2.1994 is filed after a delay of four years but it cannot be overlooked that Special Civil Application No. 6325/94 was already filed for directing the respondents to fix the seniority of RFOs on the basis of the amended Rule dated 6.3.1993 and the RFOs belonging to the group of late Latifs had already contended that after the amendment dated 6.3.1993 a fresh seniority list of the RFOs for the purpose of promotion to the cadre of ACFs must be prepared on the basis of the amendment dated 6.3.1993 and not on the basis of the unamended Rules. The said petition was filed in September, 1994 after publication of the final seniority list dated 3.2.1994. It cannot, therefore, be said that Special Civil Application No. 6325/94 suffers from any delay. It appears that what prompted the other RFOs to file Special Civil Application No. 7611/98 was that inspite of the amendment dated 6.3.1993, the respondent authorities went on operating the seniority list dated 3.2.1994 (as on 1.1.1991) prepared on the basis of the pre-amended Rules, for promotion to the cadre of ACFs even after 1994. If the respondent authorities had prepared another seniority list after 6.3.1993 on the basis of the amendment contained in the notification dated 6.3.1993 and such a seniority list were operated for promotion to the cadre of ACFs, there would have been no cause of action for late Latifs to file Special Civil Application No. 7611/98. It, therefore, cannot be said that either of these two petitions deserves to be dismissed on the ground of delay. There is, of course, another facet of this contention urged on behalf of the respondents which is connected with the another contention and will, therefore, be dealt with at an appropriate stage.

Do the petitions suffer from non-joinder of parties ?

12.0 The third preliminary contention urged on behalf of the respondents is that all the affected parties are not joined.

12.1 In the memo of Special Civil Application No. 6325 of 1994, the petitioners have submitted that the petitioners are not challenging the seniority of this or that officer, but the petition is on the interpretation of the amended rule and against the violation of the petitioners' fundamental rights under Articles 14 and 16 of the Constitution in the matter of promotion to the higher post of ACF and it is not necessary to implead

individual officers as party respondents.

12.2 Although the petitioners did not join any of the officers likely to be affected by the outcome of the petition as a party respondent, four of such officers likely to be affected applied for being joined as party respondents in the month of April, 1999 when they came to learn about the orders passed in Special Civil Application No. 7611 of 1998 wherein this Court had directed that the operation of the impugned seniority list dated 3.2.1994 and the promotion of the concerned RFOs shall be subject to the result of Special Civil Application No. 7611/98. This order was passed on 11.3.1999. It was on account of the said order that some of the affected parties were put to notice and they came forward for being joined as party respondents.

12.3 On this issue, the Apex Court has held in *General Manager, South Central Railway vs. AVR Siddhart*, AIR 1974 SC 1755 and in *A. Janardhana vs. Union of India*, AIR 1983 SC 769 that when a petition challenges the principle on which seniority is fixed and not the placement of an individual officer in a seniority list, the petition is not liable to be dismissed on the ground of non-joinder of necessary parties, more particularly when some of the affected parties are before the Court and there is a fair contest.

Looking to the subject matter of the controversy in Special Civil Application Nos. 6325 of 1994 and 7611 of 1998, it is clear that the petitioners are not challenging the placement of an individual officer at a particular place. What is challenged is the decision of the authorities to operate the seniority list of RFOs as on 1.1.1991 prepared on the basis of the unamended Rules even for giving promotions to the cadre of ACFs after the amendment dated 6.3.1993. Moreover when the affected parties who have been promoted as ACFs on the basis of the seniority list as on 1.1.1991 have already been represented through four officers who have of course been joined on their own, having heard the learned counsel for all the parties before the Court, the Court has been satisfied that there has been a fair contest. Of course, there is no representation on behalf of the persons who have been promoted on the basis of the seniority list dated 3.2.1994 prior to filing of Special Civil application No. 7611 of 1998. That ground will have some bearing while moulding the reliefs. Subject to the said rider, the Court rejects the preliminary contention raised on behalf of the respondents that the petitions must fail on the ground of non-joinder of necessary

parties.

12.4 As regards the decision of the Apex Court in Ram Kishore Gupta vs. State of U.P., (1999) 3 SCC 453, the following observations in para 6 of the said decision would indicate that the said decision is not applicable to the facts of the instant case and the Apex Court in para 7 of the said decision also indicated that the Apex Court remanded the matter to the High Court on its administrative side for determining the seniority of the appellants-the promotees were not before the Court-and, therefore, it was held that the seniority of direct recruits could not be determined in absence of the promotees and that too when the question of seniority was not an issue before the High Court out of which an appeal before the Apex Court had arisen.

"6. We are afraid (sic that) to determine the seniority of the direct recruits appointed pursuant to the orders made by this Court on 16.13.1987 vis-a-vis the promotees who are not before the Court would be hazardous, particularly when the question of seniority was not an issue before the High Court out of which this appeal arises. Therefore, we must confine ourselves to the issue before us as to whether these appellants could have been appointed or not and they having been appointed now and in the light of the decision of this Court in O.P. Garg vs. State of U.P., 1991 Supp (2) SCC 51 they ought to have been appointed. There is no need for us to consider these matters any more."

In the instant case, as stated above, some of the affected RFOs who had passed the examination within the specified chances and the specified period are already before the Court and they have been fully heard on this very controversy involved in this petition.

12.5 Similarly in Prabodh Verma vs. State of U.P., AIR 1985 SC 167, the Apex Court held that the High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

In the present case, some of the affected parties are already before the Court. Of course, they have come forward on their own in their individual capacity and, therefore, they cannot be said to be in a representative capacity. However, applying the principles laid down by the Apex Court in General Manager, South Central Railway vs. AVR Siddhart, AIR 1974 SC 1755 and in A. Janardhana vs. Union of India, AIR 1983 SC 769, it appears to the Court that when the case of the affected parties has been fairly represented and the Court proposes to mould the reliefs appropriately so as not to revert that category of the officers who are not before the Court, the Court does not consider the absence of all affected parties in a representative capacity as fatal to the petitions.

THE PRINCIPAL CONTROVERSY

13. As far as challenge to the vires of Rule 7 of the 1972 rules in Special Civil Application No. 3110 of 1999 is concerned, the petitioner did not make it clear in the memo of the petition whether the challenge is to the amended Rule 7 or to the unamended Rule 7, but having heard Mr Paresh Upadhyay, learned counsel for the petitioner, it appears that the challenge is to the proviso to Rule 7 prior to amendment dated 6.3.1993. This Court does not propose to entertain this petition on merits as the statutory Rule made in 1972 is sought to be struck down in a petition filed in the year 1999 when promotions have been made on the basis of the impugned rule for a number of years and striking down such a rule at this stage would result into upsetting the seniority of a large number of officers as well as disturbing the promotions given to a large number of officers. On this ground alone, Special Civil Application No. 3110 of 1999 deserves to be dismissed.

14. Before dealing with the principal controversy as to what is meant by "prospective effect" or "retrospective effect" being given to the amendment to the proviso to Rule 7 contained in notification dated 6.3.1993, it will be convenient first to deal with contention (A) of the petitioners. There may be different seniority lists for different purposes. There may be a seniority list for retrenchment in service so that in case of retrenchment on account of the abolition of posts, retrenchment would have to take place according to juniority decided on the basis of Rule 22 of the Reangers Recruitment Examination Rules of 1974 under which initial seniority of RFOs is required to be fixed on the basis of their inter se rank at the training

examination. However, as far as promotion is concerned, there may be different rules prescribing a different principle of seniority depending on the date of passing of the departmental examination for promotion or depending on the number of chances within which such examination is passed or a component of various considerations such as the fluctuating contents of the proviso to Rule 7 in the instant case. This discussion should suffice to deal with contention (A) urged on behalf of the petitioners.

15.1 The contention of Dr Mukul Sinha and Mr Paresh Upadhyay for the petitioners is that for giving promotions to the cadre of ACFs after 6.3.1993, a fresh seniority list has to be prepared on the basis of the Rules as amended on 6.3.1993 and that the respondents cannot be permitted to operate the seniority list dated 3.2.1994 reflecting the position as on 1.1.1991 prepared on the basis of the unamended Rules. On behalf of the petitioners, it is submitted that the placement of the contesting respondents or persons similarly situate i.e. other regular pass officers in the seniority list prepared on the basis of the unamended Rules did not confer any vested right on them. Strong reliance is placed on the decision in Wing Commander, J. Kumar vs. Union of India, AIR 1982 SC 1064, and on the other decisions.

15.2 The above contention of the petitioners was sought to be repelled on behalf of the officers who got advantageous position in the aforesaid seniority list as on 1.1.1991 firstly on the ground that the amendment to the Rules made on 6.3.1993 would not apply to RFOs recruited prior to 6.3.1993 and at any rate to RFOs who passed the departmental examination prior to 6.3.1993 and that the petitioners as well as respondents had passed the departmental examination prior to 6.3.1993. Alternatively, it was submitted that once the relevant statutory rules conferred advantageous position on the persons who passed the departmental examination within the specified period and the specified chances (the regulars) vis-a-vis the late Latifs, the regulars got a vested right of seniority and the said right could not be altered to their disadvantage by any subsequent rule more particularly when the Rules themselves do not purport to be applicable retrospectively.

16. The classical exposition of the principle as to when a service rule can be said to have been applied retrospectively is to be found in Constitution Bench judgment of the Apex Court in State of Jammu & Kashmir

vs. Triloki Nath Khosa, AIR 1974 SC 1. Speaking for the Court, Hon'ble Mr Justice Y.V. Chandrachud, J (as His Lordship then was) laid down the following principle :-

"It is wrong to characterise the operation of a service rule as retrospective for the reason that it applied to existing employees. A rule which classifies such employees for promotion purposes undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent."

These observations are a complete answer to submission No. (5) made on behalf of the respondents.

17. It is also necessary to refer to the decision of another Constitution Bench of the Apex Court in Chariman, Railway Board vs. C.R. Rangadhamaiah, 1997 (6) SCC 623. That case was concerned with computation of pension in respect of employees who had retired after 1.1.1973 and who were, at the time of their retirement, entitled to have their pension computed on the basis of their average emoluments in accordance with the applicable provisions at the time of their retirement. By subsequent amendment of the Rules with retrospective effect, the formula for computing the pension was sought to be changed to their detriment. The Central Administrative Tribunal struck down such amendment with retrospective effect as

unreasonable and arbitrary and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. The Apex Court examined the contention about retrospective amendment on a wider canvass and after a review of several decisions laid down the law in the following terms :-

"20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed or, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

After laying down the aforesaid rule and after referring to two Constitution Bench decisions in B.S. Yadav vs. State of Haryana, 1980 Supp.SCC 524 and State of Gujarat vs. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33, the Apex Court observed as under :-

"23. The said decision in Raman Lal Keshav Lal Soni of the Constitution Bench of this Court has been followed by various Division Benches of this Court. (See K.C. Arora vs. State of Haryana, (1984) 3 SCC 281, T.R. Kapur vs. State of Haryana, 1986 Supp SCC 584, P.D. Aggarwal vs. State of U.P., (1987) 3 SCC 622, K. Narayanan vs. State of Karnataka, 1994 Supp (1) SCC 44, Union of India vs. Tushar Ranjan Mohanty, (1994) 5 SCC 450 and K. Ravindranath Pai vs. State of Karnataka, 1995 Supp (2) SCC 246).

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having

retrospective operation which has the effect of taking away a benefit already available to the employees under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon vs. Union of India, AIR 1967 SC 1889, B.S. Yadav vs. State of Haryana, 1980 Supp SCC 524 and Ramanlal Keshav Lal Soni."

18. The question raised by the contesting respondents is squarely covered by the decision in Wing Commander vs. Union of India, AIR 1982 SC 1064, wherein the Apex Court laid down the law in the following unmistakable terms and, that too, in the matter of dispute about amendment to a rule pertaining to seniority:-

"17. Apart from what is stated above, it is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rule and except to the extent of protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned service. There is, therefore, no substance in the argument advanced by the appellant that it was not open to the Government of India to introduce a new principle of seniority by promulgation of the impugned rules so as to affect his rights for future promotion."

Thus the principle laid down in the aforesaid decision is quite in consonance with the principles laid down by the Constitution Benches of the Apex Court in Trilokinath Khosa (Supra) as well as in the Rangadamaiha (Supra).

19. The learned counsel for the contesting respondents, however, vehemently relied on the observations in the aforesaid paragraph 24 of the judgement in Rangadhamaiya's case (supra) and also submitted that the Apex Court had approved the decision in T.R. Kapur vs. State of Haryana, 1986 Supp SCC 584 relied upon by the learned counsel for the contesting respondents.

It is, however, important to note that even while holding that the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion and seniority of the employees, the Apex Court has held that what is constitutionally prohibited is disturbing a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. What the petitioners are principally agitating in this petition is not that the amendment to proviso to Rule 7 as per notification dated 6.3.1993 should be applied retrospectively so as to adversely affect the promotions to the cadre of ACFs made prior to 6.3.1993. All that the petitioners are seeking in the first two petitions is that promotions to the cadre of ACFs after 6.3.1993 should be directed to be made on the basis of the seniority list of RFOs prepared after applying the amendment to proviso to Rule 7. Hence, the rule is not invoked with effect from an anterior date i.e. prior to 6.3.1993, but it is invoked only prospectively.

20. The learned counsel for the contesting respondents, however, submitted that a different chord was struck down by the Apex Court in T.R. Kapur vs. State of Haryana, 1985 Supp SCC 584, wherein it was held that the right to be considered for promotion is a condition of service and that the benefits required under the rules made in exercise of the powers conferred by the proviso to Article 309 cannot be taken away retrospectively by an amendment to the disadvantage of a Government servant. It is contended that since the 1972 Rules particularly the proviso to Rule 7 prior to its amendment on 6.3.1993 was available to the regular pass RFOs and since the petitioners as well as the contesting respondents had passed the examination prior to 6.3.1993 and in the seniority list of RFOs as on 1.1.1991, the contesting respondents had an advantageous position, they had obtained a vested right to be considered for promotion on the basis of such seniority. Therefore, even after 6.3.1993 the respondent authorities were bound to follow the same seniority list in case of all the RFOs who had passed the examination before 6.3.1993.

21. It is not possible to accept the contention of the contesting respondents that a rule of seniority conferring an advantageous position to a certain class of employees cannot be altered. The only prohibition which the Apex Court has laid down as flowing from the

provisions of Articles 14 and 16 is that such alteration cannot be with effect from an anterior date. In the case of T.R. Kapur (Supra), the Apex Court was not concerned with such a rule of seniority but a rule under which, according to the judgment in a previous matter, a member of Class II service in PWD was not required to have a University degree for promotion to the post of Executive Engineer in Class I service. Thus, under the unamended rule of the Class I Rules, the petitioners before the Apex Court were eligible for promotion as Executive Engineer in Class I service despite the fact that they did not possess a degree in Engineering. Just two days before the expiry of the period within which promotion of eligible persons including the petitioners was to be completed, the State Government issued a notification purporting to amend the relevant rule with retrospective effect dating back to about 20 years, the notification made a degree in Engineering as essential qualification for promotion to Class I service. The petitioners challenged this notification as being violative of Articles 14 and 16 of the Constitution and ultra vires the State Government by reason of the proviso to Section 82 (6) of Punjab Reorganization Act, 1966.

It was in the context of the aforesaid facts that the Apex Court held that the unamended rule conferred a vested right on persons like the petitioners which could not be taken away by retrospective amendment and that the rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be. The Apex Court then observed that even though an authority competent to lay down qualifications for promotion is also competent to change the qualifications and that the rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively, the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect and, therefore, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled.

In the instant case, the learned counsel for the petitioners have conceded that they do not pray for any direction to recall the promotions to the cadre of ACFs already made prior to 6.3.1993 when the relevant rule regarding seniority was amended. All that they want is the application of the amended rule with effect from the date of amendment for preparing a fresh seniority list and operation of such seniority list for promotion to the

cadre of ACFs after 6.3.1993. Hence, the decision in T.R. Kapur case does not advance the case of the contesting respondents any further.

22. Similarly, the decision in R.S. Ajara vs. State of Gujarat, (1997) 3 SCC 641, does not advance the petitioners' case. It is true that there the Apex Court held that no rule framed under Article 309 can affect any vested right but in the facts and circumstances of that case the Apex Court even observed that when the seniority inter se between the promotee and the directly recruited officers had been finally determined prior to the issuance of the resolution dated 31.1.1992 impugned in the said litigation, it cannot be said that the seniority was being altered to the prejudice of the promotee officers. The said observations also help the petitioners in the instant case as prior to 6.3.1993 no seniority was published wherein the contesting respondents were having any advantageous position. On the contrary, in the seniority lists published in the year 1983 as well as in the year 1987, the petitioners had an advantageous position in the seniority lists. However, the Court does not propose to rest its decision on the aforesaid seniority lists of the years 1983 and 1987 because they were prepared on the basis of Rule 22 of the Recruitment Examination Rules of 1974 under which initial seniority of RFOs is required to be fixed on the basis of their inter se rank at the training examination.

Moreover, in the aforesaid decision in the case of R.S. Ajara, the Apex Court has reiterated the principles laid down in Union of India vs. S. Krishna Murthy, (1989) 4 SCC 689 that nobody has any fundamental right to a particular seniority or to any chance of promotion.

23. The decision in P. Mahendran vs. State of Karnataka, AIR 1990 SC 405 was not concerned with any change in the rule of seniority, but it dealt with a situation where the rule prescribing eligibility criteria was changed after commencement of the selection process and after vacancies having arisen. It is, of course, true that the case of D.P. Sharma vs. Union of India, AIR 1989 SC 1071 was concerned with change in the rule of seniority but what the Apex Court laid down therein was that the rules had no retrospective effect and could not impair the existing rights of officials who were appointed long prior to the rules came into force. In the facts of that case, it was held that the employees appointed before 1968 being governed by those memoranda had the right to have their seniority determined

accordingly before the rules came into the force. That being their right, the rules cannot take it away to their prejudice. The Court then laid down that if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively. Accordingly, this principle would have been violated if the authorities had given the effect to the amendment to Rule 7 made on 6.3.1993 even for the period prior to 6.3.1993 by reverting the ACFs promoted prior to 6.3.1993. However, that is not the case of the petitioners and in any case this is not what the Court proposes to direct in the instant case.

24. The decision of the Apex Court in Union of India vs. M. Ravi Varma, AIR 1972 SC 670 was based on the language of the relevant office memorandum dated December 22, 1959 which was examined in the light of the objectives sought to be achieved as stated in paragraphs 9 to 11 of the said judgment. The rationale for changing the principle of seniority from the length of service to the date of confirmation was explained in the decision. The said decision will have to be read in light of the decision of the Constitution Bench Triloki Nath Khosa (Supra) and in Chairman, Railway Board (supra).

25. In light of the aforesaid discussion, it is held that by operating the seniority list of RFOs as on 1.1.1991 prepared on the basis of the preamended rules, the respondents have acted illegally in granting promotions from the cadre of RFOs to the cadre of ACFs even after 6.3.1993.

26. Arguments were addressed at length on the question of interpretation of the proviso to Rule 7. The learned counsel for the petitioners placed reliance on the decision of a Division Bench of this Court in Kiritkumar vs. State of Gujarat, 1985 (2) GLR 1077 which dealt with the case of amendment to proviso to Rule 7 of the Sales Tax Officers' Examination Rule, 1967. The Division Bench observed that the amendment was made to soften the rigour of the previous rule which caused agony and frustration to the late Latifs who abounded in number and who might rot and become a drag on the administration if their fate was not improved. It was this reason which prompted the Government to issue the circular dated 2.4.1975 (followed by Government Resolution dated 30.9.1978) for changing the departmental examination rules for the purpose of changing the rule of seniority. There the Court observed that the scope of the amendment was to limit the scope of late Latifs claiming seniority

and promotion in the higher cadre and not to lose their seniority in the lower cadre. This Court has no hesitation in following the said judgment and directing the respondent authorities to apply the amendment to the proviso to Rule 7 as per the notification dated 6.3.1993 for preparing the seniority list of RFOs for the period from 6.3.1993 onwards. In this connection, it is not necessary to refer to the decisions in the case of Deputy Mamlatdars rendered by another Division Bench, as in that case the Court was concerned with the rules for determining seniority in the promotional cadre of Deputy Mamlatdars. In the instant case, the subject matter of the petitions is not seniority list of the promotional cadre of ACFs, but seniority list of the lower cadre of RFOs. Hence, the decision in the case of Kiritkumar (Supra) is more apposite. In each cadre seniority list will have to be prepared on the basis of the rules applicable to the particular cadre and the administrative exigencies prevailing in that Department.

27. While concluding the discussion on the principal controversy between the parties, the Court will deal with the last submission made on behalf of the State Government. Ms Manisha Lavkumar, learned AGP has strongly relied on the decision of the Apex Court in Shitla Prasad Shukla vs. State of U.P., 1986 (2) SLR 629 = AIR 1986 SC 1859 and has submitted that in writ jurisdiction, this Court would not exercise jurisdiction akin to appellate jurisdiction against the determination of seniority by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fairplay.

The submission is misconceived. In this petition, this Court has not been required to consider the question whether one rule of seniority would be better than another. All that this Court has been called upon to consider is the question whether the amendment dated 6.3.1993 to the proviso to Rule 7 of the Departmental Examination Rules of 1972 which are statutory in nature, operates while giving promotions to the cadre of ACFs after 6.3.1993. Hence, while deciding this question, this Court obviously does not sit in appeal over, but has only examined the legality of, the decision of the respondents in operating the seniority list of RFOs even after 6.3.1993.

28. RELIEFS TO BE GRANTED

The next question is what reliefs should be granted to the petitioners. On this question also, the

learned counsel for the contesting respondents as well as the learned AGP have strongly urged that promotions already made on the basis of the seniority list dated 3.2.1994 should not be upturned as that would create unnecessary dissatisfaction amongst a large number of officers promoted from the cadre of RFOS to ACFs between 6.3.1993 and till the date of hearing. Ms Manisha Lavkumar, learned AGP has strongly relied on the decision of the Apex Court in KV Subba Rao vs. State of A.P., AIR 1988 SC 887 and has submitted that in that case the Supreme Court directed the Government not to disturb the promotions given to the Tehsildars between 1961 and 1971 as they had been holding the posts for sufficient long period and applying amendment in the rules retrospectively was bound to create problems and, therefore, the Supreme Court directed the Government to apply the amendment from 9.10.1980 and directed to operate prospectively.

The decision, however, does not lay down any principle as is sought to be canvassed. In the facts of that case, the Supreme Court interfered with the Government decision under which by a notification dated 9.10.1980, the Government sought to apply the amendment in the rules retrospectively giving effect from 1961 and, therefore, what the Apex Court found fault with was the Government notification itself giving retrospective effect to the amendment in the rule which would result into disturbing promotions given to a large number of officers between 1961 and 1971. This situation is not present in the instant case. It is not even the case of the petitioners that promotions to the cadre of ACFs prior to the amendment of the proviso to Rule 7 on 6.3.1993 should be disturbed. All that the petitioners are seeking herein is that the promotions be readjusted on the basis of the Rule amended on 6.3.1993 with effect from that particular date and not any prior date.

However, Mr SM Mazgaonkar, Mr KB Pujara and Mr DC Dave have vehemently submitted that in case of K.R. Mudgal vs. R.P. Singh, AIR 1986 SC 2086, Their Lordships of the Supreme Court laid down the following important principle which must be followed by this Court while granting the reliefs :-

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should

approach the Court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties."

Prima facie it may appear that the aforesaid decision is in favour of the petitioners, but on closer analysis it is clear that the grievance in the present petitions is quite different. The petitioners are not challenging the placement of the respondents in the seniority list dated 3.2.1994 reflecting the position of RFOs as on 1.1.1991. What the petitioners are challenging is non-preparation of a fresh seniority list by the respondent authorities on 6.3.1993 after amendment to Rule 7 of the Departmental Examination of 1972 and the consequent action of the respondent authorities in operating the seniority list dated 3.2.1994 reflecting the position as on 1.1.1991. Admittedly, no seniority list of RFOs has been published reflecting their position as on any date on or after 6.3.1993. In this view of the matter, it cannot be said that any settled seniority is sought to be unsettled and, therefore, the petitioners may not be granted any relief in view of the principle laid down by the Apex Court in K.R. Mudgal vs. R.P. Singh (Supra).

29. While Special Civil Application No. 6325/94 and 7611/98 deserve to be allowed in view of the finding that the respondent authorities acted illegally in operating the seniority list dated 3.2.1984 (reflecting the position of RFOs as on 1.1.1991) while giving promotions to the cadre of ACFs after 6.3.1993, nevertheless the question would remain whether the said finding should be taken to its logical conclusion in which event the result would be reversion of a large number of, if not of all, officers who were promoted to the posts of ACF between 6.3.1999 till date. While dealing with the preliminary objections raised on behalf of the contesting respondents about delay in filing Special Civil Application No. 7611/98 (para 11.2) and non-joinder of the affected officers who were promoted as ACFs till 12.10.1998 (paras 12.3 & 12.5), it was made clear that even while Special Civil Application No. 7611 of 1998 did not deserve to be dismissed on the ground of delay and that even though Special Civil Application No. 6325 of 1994 would not fail for non-joinder of all the affected parties, these aspects are required to be considered while moulding the reliefs. The fact remains that the officers who were promoted from the cadre of RFOs to the cadre of ACFs between 6.3.1993 and 12.10.1998 are not joined as party

respondents in Special Civil Application No. 6325 of 1994 or in Special Civil Application No. 7611 of 1998 and that they were put to notice of these petitions after 12.10.1998. This Court would, therefore, direct that in the course of implementing this judgment, the respondent authorities shall not revert the officers who were promoted to the posts of ACF between 6.3.1993 and 12.10.1998. However, while preparing the seniority list of ACFs reflecting their position as on 6.3.1993 onwards, the respondent authorities shall give effect to this judgment by applying the amended proviso to Rule 7 of the Departmental Examination Rules of 1972 for preparing the seniority list of RFOs as on 6.3.1993 and, thereafter to reflect such seniority of RFOs in the cadre of ACFs.

30. As far as Special Civil Application No. 449 of 1994 is concerned, the Court finds no fault with the impugned decision contained in Annexure "G" to the petition as it is obvious that direct recruits selected in a previous batch (1979-80) would en-bloc become senior to direct recruits of the subsequent batch (1980-81). Rule 22 of the Rangers (Subordinate Forest Service) Recruitment Examination Rules, 1974 provides that the Rangers shall be governed by their respective ranks in the final examination irrespective of the date of joining the service. The said rule is a part of the scheme where the candidates selected in one batch pursuant to a written test and personal interviews are required to undergo practical training for a stipulated period and thereafter the candidates finally selected are required to undergo training for the Rangers Course at the college at Dehradun or Coimbatore for a stipulated period and on successful completion of such training, the candidates are appointed as Rangers if they pass the training with higher standard certificate. It is provided that seniority of such Rangers shall be governed by their respective ranks in the final examination, irrespective of the date of joining the service. It appears that there were two batches of Rangers (RFOs). The previous batch was selected in 1979 and sent for training and examination and the next batch was selected in 1980 and thereafter they were sent for training and examination. It appears from Annexure "F" that those who were selected in the 1980-81 batch were given training for shorter period on account of their higher qualification. That, however, does not give the officers in the subsequent batch any ground for claiming higher seniority over officers in the previous batch. Hence, there is no substance in this petition and the petition deserves to be dismissed.

O R D E R

31. In view of the above discussion, the following order is passed :-

Special Civil Application No. 449/94 is dismissed. Rule is discharged with no order as to costs.

Special Civil Application No. 3110/99 is dismissed. Rule is discharged with no order as to costs.

Special Civil Application No. 6325/94 and Special Civil Application No. 7611/98 are partly allowed to the following extent :-

A It is declared that the respondent authorities acted illegally in operating the seniority list dated 3.2.1994 reflecting the position of the Range Forest Officers as on 1.1.1991 for the purpose of granting promotions to the cadre of Assistant Conservators of Forests after 6.3.1993 and that promotions given by the respondent authorities from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forest from 6.3.1993 onwards were not in accordance with the Gujarat Forests Departmental (Forest Officers Examination) Rules, 1972 as amended by the Amendment Rule contained in the Government Notification dated 6.3.1993.

B It is directed that -

(1) the respondent authorities shall prepare a fresh seniority list of Range Forest Officers reflecting their seniority as on 6.3.1993 on the basis of the aforesaid Departmental Examination Rules of 1972 as amended by the Government Notification dated 6.3.1993. Such seniority list shall cover all the employees holding the posts of Range Forest Officer (previously designated as Rangers) as on 6.3.1993.

(2) Thereafter with effect from 6.3.1993 the respondent authorities shall readjust the promotions to the cadre of Assistant Conservators of Forests on the basis of such fresh seniority list of Range Forest Officers. However, the

officers who were actually promoted from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests between 6.3.1993 (the date of notification amending the proviso to Rule 7) and 12.10.1998 (the date on which for the first time this Court made the promotions to be cadre of Assistant Conservators of Forests subject to the result of Sp.C.A. No.7611/98) shall not be reverted, but for the purpose of determining seniority in the cadre of Assistant Conservators of Forests, their promotions shall be adjusted as regular promotions as and when they become due for promotion to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the aforesaid direction.

(3) Henceforth the respondent authorities shall give promotions from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the above direction.

Rule is accordingly made absolute to the aforesaid extent in Special Civil Application Nos. 6325 of 1994 and in 7611 of 1998 with no order as to costs.

Sd/-

October 27, 1999 (M.S. Shah, J.)

At this stage, the learned counsel for the contesting respondents pray for stay of operation of this judgment for some time to enable their clients to have further recourse in accordance with law.

In view of the above request, the operation of this judgment shall remain stayed till 30.11.1999.

Sd/-

October 27, 1999 (M.S. Shah, J.)

sundar/-